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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301167-6658-02]

RIN 0648-BF89

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing management measures for the 2016 summer flounder, scup, and black sea bass recreational fisheries, changes to the commercial scup incidental possession limit, and two minor corrections to the summer flounder commercial fishery minimum mesh size regulations. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder, scup, and black sea bass resources, to reduce unnecessary commercial discards by allowing more incidentally caught scup to be retained by vessels, and to correct inaccuracies within the summer flounder mesh regulations.

DATES: Effective *[insert date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr.

Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at:

<http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fisheries Management Specialist, (978) 281-9236.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal summer flounder, scup, or black sea bass charter/party vessel permit, regardless of where they fish.

A proposed rule to implement the 2016 Federal recreational management measures (minimum fish size, season, and possession limit) for the summer flounder, scup, and black sea bass fisheries, scup commercial possession limit change, and summer flounder mesh requirement clarifications was published in the **Federal Register** on May

23, 2016 (81 FR 32269), with a 15-day comment period that ended on June 7, 2016.

Comments received on the proposed rule are summarized and responded to in the **Comments and Responses** section found later in this rule. Additional background and information on the process to develop the measures described is provided in the preamble to the proposed rule and is not repeated here.

2016 Recreational Management Measures

NMFS is implementing the following measures that would apply in the Federal waters of the EEZ:

Table 1. Summary of 2016 Summer Flounder, Scup, and Black Sea Bass Federal Recreational Management Measures.

	Minimum Size	Per-Angler Possession Limit	Season
Summer Flounder, through December 31, 2016	Conservation equivalency – specific management measures determined by state of landing (<i>see Table 2</i>)		
Summer Flounder, beginning January 1, 2017	18 inches (45.7 cm)	4 fish	May 1-September 30
Scup	9 inches (22.9 cm)	50 fish	January 1–December 31
Black Sea Bass	12.5 inches (31.8 cm)	15 fish	May 15-September 21, October 22-December 31

These measures apply to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously-established recreational harvest limits for these fisheries. See 80 FR 80689, published December 28, 2015, for background information on 2016 harvest limits. Additional detail on the measures for each species is provided below.

Summer Flounder Recreational Management Measures

NMFS is implementing conservation equivalency to manage the 2016 summer

flounder recreational fishery, as recommended by the Council and Commission. The 2016 recreational harvest limit for summer flounder is 5.42 million lb (2,214 mt) and final landings for 2015, as estimated by the Marine Recreational Information Program (MRIP), were 4.88 million lb (2,096 mt). Maintaining the 2015 management measures is expected to effectively constrain 2016 summer flounder recreational landings and prevent the recreational harvest limit from being exceeded.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2001; 66 FR 36208), allows each state to establish its own recreational management measures (per-angler possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize regulation differences for anglers fishing in adjacent waters.

The Commission implemented Addendum XXVII to its Summer Flounder FMP to continue regional conservation equivalency for fishing year 2016. The Commission has adopted the following mix of stand-alone state and regions for summer flounder measures: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. In order to provide the maximum amount of flexibility and to continue to adequately address the state-by-state differences in fish availability, each state in a region is required by the Council and Commission to establish fishing seasons of the same length, with identical

minimum fish sizes and possession limits. The Commission certified, by letter dated June 7, 2016, that the Addendum XXVII measures implemented by individual states and regions, when combined, are the conservation equivalent of coastwide measures that would be expected to result in the recreational harvest limit being achieved, but not exceeded. More information on this addendum is available from the Commission (www.asmfc.org).

Based on the recommendation of the Commission, we find that the recreational summer flounder fishing measures implemented for 2016 in state waters are, collectively, the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this rule to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2016. The 2016 summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in Table 2.

Table 2. 2016 Commission-Approved Conservation Equivalent Recreational Management Measures for Summer Flounder.

State		Minimum Size (inches)	Possession Limit	Open Season
Massachusetts		16	5 fish	May 22-September 23
Rhode Island		18	8 fish	May 1-December 31
Connecticut		18	5 fish	May 17- September 21
CT shore program (46 designed shore sites)		16		
New York		18	5 fish	May 17- September 21
New Jersey	Coastal waters, east of Cape May COLREGS	18	5 fish	May 21- September 25

	1 shore program site	16	2 fish	May 21-September 25
	Delaware Bay, west of Cape May COLREGS	17	4 fish	May 21-September 25
Delaware		16	4 fish	January 1- December 31
Maryland		16	4 fish	January 1- December 31
PRFC		16	4 fish	January 1- December 31
Virginia		16	4 fish	January 1- December 31
North Carolina		15	6 fish	January 1- December 31

In addition, this action maintains the current default coastwide measures (an 18-inch (45.7-cm) minimum size, 4-fish possession limit, and May 1-September 30 open fishing season), that become effective January 1, 2017, when the 2016 conservation equivalency program expires. These measures will remain effective until replaced by the 2017 recreational management measures in the spring of next year.

Scup Recreational Management Measures

This rule maintains status quo scup measures for the 2016 fishery: A 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season. The 2016 scup recreational harvest limit is 6.09 million lb (2,763 mt) and 2015 recreational landings were 5.11 million lb (2,318 mt). Based on this, no changes in measures are needed to ensure the 2016 recreational harvest limit is not exceeded, and further liberalization of the management measures was not requested by the Council or Commission.

Black Sea Bass Recreational Management Measures

This rule implements a 12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and open seasons of May 15-September 21 and October 22-December 31 in Federal waters. The states of Maryland, Delaware, Virginia and North Carolina have also adopted these measures for state waters. New Jersey, New York, Connecticut, Rhode

Island, and Massachusetts have adopted different, more restrictive measures for their state waters, as required by the Commission's Addendum XXVII to the FMP. The Commission certified, by letter dated June 7, 2016, that the northern states (Massachusetts to New Jersey) have implemented measures consistent with Addendum XXVII.

The Council and the Commission made use of the preliminary MRIP estimates when developing 2016 management measures. It was, at the time of the development process, the best available information. In some years, the final MRIP estimates that are typically available in April have been slightly different than the preliminary year-end estimates available in February. The final 2015 MRIP estimates, delayed until June 13, 2016, are substantially different than the preliminary information used by the Council and Commission. The 2015 landings estimate increased from 3.62 (1,642 mt) to 3.97 million lb (1,801 mt)--a 350,000-lb (159-mt) increase. This would necessitate a 30.2-percent reduction from 2015 landings to constrain 2016 catch to the 2.82 million lb (1,279 mt) recreational harvest limit. The preliminary information used by the Council and Commission indicated a 22.1-percent reduction in landings was necessary.

The majority of black sea bass are caught inside state waters from New Jersey north. The Council and Commission recommend maintaining the 2015 management measures (12.5-inch (31.8-cm) minimum fish size, 15-fish possession limit with an open season of May 15-September 21 and October 22-December 31) in Federal waters and for state waters in Delaware, Maryland, Virginia, and North Carolina. Because catch from Federal waters and state waters from Delaware to North Carolina is generally less than 8 percent of the total catch, recreational measures must necessarily focus on state waters

from New Jersey north. The Council and Commission's recommendations were contingent on the northern states (New Jersey north) implementing at least a 23-percent reduction to their state waters measures through a Commission Addendum. This approach also used the accountability measure methods developed for 2015. The accountability measure has been triggered again for 2016; however, because the previously developed and implemented approach (i.e., maintaining Federal measures and applying them in states from Delaware south while states from New Jersey north reduce landings to constrain catch) is being maintained, no additional measures are required for 2016.

The Council recommended a backup coastwide measure of a 14-inch (35.56-cm) minimum fish size and a 3-fish possession limit with an open season of July 15-September 15 to be implemented in Federal waters and for southern states only if the northern states did not comply with the landings-reduction requirements of the Commission's Addendum. NMFS received a letter from the Commission on June 7, 2016, before the final MRIP estimates were available, stating that the northern states had developed and implemented black sea bass measures designed to achieve the required 23-percent reduction in 2016 recreational landings.

In response to the unexpected change in the final MRIP estimates for black sea bass, the Commission's Black Sea Bass Management Board held an emergency teleconference on July 6, 2016, to discuss the new MRIP estimates and to consider additional management action. In the discussion, Board members spoke about challenges in making any additional changes. They cited administrative burdens and timing complications of both receiving new information so late in the fishing year and

difficulties implementing regulatory changes quickly mid-season. Many reiterated that the backup coastwide measures were intended to ensure states complied with the addendum requirements and were never envisioned for implementation under any other scenario. That is, backup measures were only designed as an incentive to ensure state compliance and would only be used in the event that states failed to implement the addendum-required measures. Some cited the potential for additional angler and public disillusionment if additional reductions were implemented mid-year. Others stated that it is possible, given the upcoming stock assessment, that catches may be increased next or, at a minimum, any regulatory changes could be developed next year in response to 2016 catch and whatever information results from the assessment. Ultimately, the Board elected not to take any action at this time. The existing measures adopted under Addendum XXVII, when evaluated with the final 2015 MRIP estimates indicates that landings reductions may be in the 24- to 25-percent range as the new data changed the effective reductions on a state-by-state basis. Some state measures are now more restrictive than previously believed, others are now more liberal.

NMFS is implementing the Council recommended original suite of measures, for the following reasons:

1. The Council and Commission developed appropriate measures on what was considered the best available information at the time of their decisionmaking processes. The backup coastwide provisions (i.e., a 14-inch (35.56-cm) minimum fish size and a 3-fish possession limit with an open season of July 15-September 15) developed by the Council as a backstop provision was designed for use only if northern states did not develop measures to achieve the required 23-percent reduction in landings based on the

preliminary MRIP information. Acting in good faith, the northern states did comply with the provisions of Addendum XXVII to the Commission's FMP. Using the coastwide provisions would disproportionately affect the southern states that adopt Federal measures for their state waters while doing little, if anything, to constrain overall catch. The actual reduction in landings from using the backstop would not achieve a 30-percent reduction in 2016 landings.

2. The final MRIP data were released substantially later than is normal and were considerably different than the preliminary estimates. It could not be foreseen that final information would increase 2015 landing estimates by nearly 10 percent, nor could it be anticipated that final estimates would be available much later than normal. Final MRIP estimates for black sea bass, usually released in mid-April, generally vary 1-2 percent from the preliminary estimates and in many years have been lower than preliminary estimates, not higher.

3. The 2016 recreational black sea bass fishery is well underway. Even acting quickly, several states indicated during the July 6 Board teleconference that they would be unable to implement regulatory changes before the end of summer. For many states, the fishery is effectively over by mid-September. Similarly, it is unlikely that an emergency action by NMFS could be implemented much more quickly. Federal measures alone would be insufficient to effectively reduce landings because the majority of catch occurs in northern state's waters.

4. A comprehensive stock assessment is scheduled for December 2016. Work has already begun on this assessment. NMFS is prepared to work quickly with the Council and Commission to react to new stock information as soon as it becomes

available in early 2017.

5. Further delay to implement management measures would affect not only black sea bass management, but also scup and summer flounder. The latter species, summer flounder, currently lacks the conservation equivalency determination for Federal waters until a final rule is published in the **Federal Register**. This would create inconsistent measures in Federal and state waters, confusion for the public, and could lead to enforcement problems.

Commercial Scup Incidental Possession Limit Change

This rule increases the incidental winter season (November 1 – April 30) scup commercial possession limit for vessels using mesh smaller than 5.0 inches (12.7 cm) from 500 lb (227 kg) to 1,000 lb (454 kg). This change is expected to allow vessels using small mesh that take scup incidental to other target species to convert some scup that would otherwise be discarded to landings. Vessels using mesh larger than 5 inches (12.7 cm) may continue to land up to the targeted commercial fishery possession limit according to the applicable Federal and state rules.

Additional Regulatory Changes

This rule also corrects two errors in the commercial summer flounder regulations. The summer flounder minimum mesh size regulations at § 648.108(a)(1) require that any vessel landing or possessing more than 100 lb (45 kg) of summer flounder from May 1 through October 31, or 200 lb (91 kg) of summer flounder from November 1 through April 30, use at least 5.5-inch (14-cm) diamond or 6.0-inch (15-cm) square mesh “throughout the body, extension(s), and codend portion of the net.” However, the turtle excluding device (TED) regulations require summer flounder trawls fishing in the sea

turtle protection area to have a TED extension with webbing no larger than 3.5 inches (9 cm). This rule eliminates the conflict between these two regulations by specifying that the minimum mesh size restrictions do not apply to extensions needed to comply with the TED regulations.

This rule also corrects an erroneous reference to the Regional Administrator's authority to terminate the fly net exemption after review. This authority has been incorrectly listed at § 648.108(b)(3) and is corrected in this rule to reference § 648.108(b)(2)(iv).

Comments and Responses

Three comments were received on measures outlined in the May 23, 2016 (81 FR 32269), proposed rule. Two comments received supported the scup incidental trip limit increase contained in this rule. Both noted this change will assist fishermen in reducing regulatory discards in small-mesh fisheries during the November to April timeframe. NMFS agrees and is implementing this change as proposed.

The other comment received raised no issues with any of the proposed measures. Rather, the individual wanted more information in the final rule about what outreach and/or inclusion of commercial and recreational fishermen's input occurred during the development of the measures in this rule.

As outlined in the SIR prepared by the Council, the public had the opportunity to provide comments during the development of the 2016 catch limits, the 2016 recreational management measures, and the scup incidental trawl possession limits. Opportunities for public participation, including recreational and commercial fishermen, occurred as part the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meetings; September 23, 2015, and November 7-10, 2015;
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meetings; October 22, 2015, and November 17, 2015;
- Council meeting; December 8-10, 2015.

Furthermore, the measures of this rule have been subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that the 2016 recreational management measures and other specification measures of this rule for the Summer Flounder, Scup, and Black Sea Bass FMP are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that the measures are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act because a delay in its effectiveness would not serve any legitimate purpose, while unfairly prejudicing federally permitted charter/party vessels. Recreational fisheries are already underway for summer flounder, scup, and black sea bass. Rulemaking has been delayed while final information from the MRIP program, provided many weeks later than is typical, has been evaluated. The Commission's Black Sea Bass Management Board met on July 6, 2016, to discuss the updated MRIP estimates. NMFS could not issue a final rule for black sea bass measures

until the outcome of this meeting was known.

Because summer flounder fisheries are already open prior to the publication of this rule, additional delay will disadvantage federally permitted charter/party vessels that would be restricted to the existing summer flounder coastwide regulations (18-inch (45.7-cm) minimum size and a 4-fish per person possession limit) until the Federal regulations implementing conservation equivalency are effective. This would unnecessarily disadvantage federally permitted vessels, which would be subject to the more restrictive measures while state-licensed vessels could be engaged in fishing activities under this year's management measures. If this final rule were delayed for 30 days, the fishery would likely forego some amount of landings and revenues during the delay period. While these restrictions would be alleviated after this rule becomes effective, fishermen may be not able to recoup the lost economic opportunity of foregone trips that would result from delaying the effectiveness of this action.

Finally, requiring a 30-day delay before the final rule becomes effective would not provide any benefit to the regulated parties. Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for each relevant species of fish while the charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay and to implement this rule upon publication in the **Federal Register**.

This final rule has been determined to be not significant for purposes of Executive

Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in fewer commercial finfish businesses being considered small. However, NMFS has determined that the new size standard does not affect its decision to certify this regulatory action. The action results in essentially status quo measures for all three fisheries and would have a minimal, potentially slightly positive, impact on all regulated entities regardless of size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2016 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

3. In § 648.108, paragraph (a)(1) is revised and paragraph (b)(3) is redesignated as paragraph (b)(2)(iv).

The revision reads as follows:

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net, except as required in a TED extension, in accordance with § 223.206(d)(2)(iii) of this title.

* * * * *

4. In § 648.125, paragraph (a)(1) is revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from November 1 through April 30, or more than 200 lb (91 kg) of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

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